

United States District Court
Eastern District of Michigan
Southern Division

United States of America,

Plaintiff,

Criminal No. 13-20597

v.

Hon. Arthur J. Tarnow

D-6 Kevin Backstrom,

Defendant.

United States' Response and Brief in Opposition to Defendant's Motion
For Compassionate Release

Kevin Backstrom pleaded guilty to conspiracy to distribute cocaine and was sentenced to 94 months' in prison. (R. 151, Judgment). He recently filed a letter, which the court construed as a motion for compassionate release. The court ordered the United States to respond, appointed counsel for Backstrom, and set a hearing for July 6, 2020 at 3:00 pm.

If a defendant makes such a motion, the district court may not act on it unless the defendant files it “after” either completing the administrative process within the Bureau of Prisons or waiting 30 days from when the warden at his facility received his request. 18 U.S.C. § 3582(c)(1)(A); *United States v. Alam*, --- F.3d ----, 2020 WL 2845694, at *2-*3 (6th Cir. 2020). As the Sixth Circuit explained in *Alam*, exhaustion of administrative remedies is “a mandatory condition” that “must be enforced” when the government raises it. *Id.*

The Bureau of Prisons (or BOP) has no record of a request from Backstrom for compassionate release. Backstrom states that he “asked for a social furlough under the CARES Act but did not receive an adequate response.” (R: 174 Backstrom 5/26/2020 Letter). He does not state when he submitted the request to the Warden. BOP Counsel have advised the U.S. Attorney’s Office that social furloughs are used for events such as family funerals, but not for long term placement. Further, the BOP advises undersigned counsel that the have no record that Backstrom submitted a request for a Reduction in Sentence or Compassionate Release. Accordingly, the Court must dismiss Backstrom’s motion. There are no “equitable carveouts,” even based on

the Covid-19 pandemic, which would excuse Backstrom's failure to first seek relief from the prison's warden. *Alam*, 2020 WL 2845694, at *4-*5.

The Government agrees that Backstrom tested positive for COVID-19. The medical records obtained from the BOP, however, seem to contradict Backstrom's claims that "he got very sick" as he claimed in his June 10, 2020 letter. (R. 175). The BOP medical records indicate that Backstrom was "asymptomatic" and placed in quarantine. (Sealed Exhibit 1, Backstrom BOP Medical Records, Pg. 3).

Backstrom's motion should be denied.

Respectfully submitted,

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/s/ Philip A. Ross

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Dated: June 26, 2020

Certificate of Service

I hereby certify that on June 26, 2020, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys of record including: Mark H. Magidson, Esquire.

/s/ Philip A. Ross

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